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<b>K.T., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 11-278</b>
	)	<b>Issued: October 6, 2011</b>
<b>U.S. POSTAL SERVICE, PROCESSING &amp; DISTRIBUTION CENTER, Little Rock, AR, Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Judge  
JAMES A. HAYNES, Alternate Judge

On November 16, 2010 appellant filed a timely appeal from a June 18, 2010 decision of the Office of Workers' Compensation Programs (OWCP) concerning the denial of his claim for wage-loss compensation. Pursuant to the Federal Employees' Compensation Act (FECA)<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant has established a recurrence of disability for the period March 19 through October 27, 2007 causally related to his accepted April 5, 2004 employment injury.

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On April 5, 2004 appellant, then a 38-year-old building equipment mechanic, filed a traumatic injury claim alleging that on that date he sustained injuries in the performance of duty. OWCP accepted the claim for neck sprain, lumbar sprain and rib sprain, which was expanded to include a consequential injury of anxiety disorder with mixed anxiety and depressed mood.<sup>2</sup> It subsequently again expanded the acceptance to include unspecified anxiety state and major depression with recurrent episode, severe with mention of psychotic behavior. Appellant returned to a light-duty job on April 12, 2004 due to restrictions from his physician.

On June 5, 2007 appellant filed an occupational disease claim alleging that on April 20, 2006 he first realized that his stress and anxiety were due to conflicts with his supervisor over work restrictions.<sup>3</sup> OWCP accepted his claim for adjustment disorder with mixed anxiety and depressed mood which was subsequently upgraded to unspecified anxiety state and major depression with recurrent episode, severe with mention of psychotic behavior.

On February 13, 2007 the employing establishment issued a proposed notice of removal based on a charge of misconduct. The termination of appellant's employment was the result of findings from an investigation by postal inspectors into prohibited and illegal activities and misuse of an employing establishment computer by appellant. The notice relates that the investigation began on October 20, 2006 as the result of an incident on October 19, 2006.

In a May 15, 2007 report, Dr. Phillip A. Tracy, a treating Board-certified family practitioner, related appellant had "ongoing disability secondary to mental status change as it relates to his neck and lower back."

In a May 22, 2007 attending physician's report (Form CA-20), Dr. James M. Sims, a treating psychiatrist, diagnosed adjustment disorder with mixed emotional features due to his employment. He indicated that appellant was totally disabled beginning December 7, 2006.

In an August 29, 2007 report, Dr. Tracy noted that appellant sustained an injury to his back, neck and ribs about two years ago and that in June 2006 he was seen by Dr. Sims for psychiatric treatment. He diagnosed cervical spine radicular pain, left leg radicular pain and right lumbar disc pain with L5 anterolisthesis, which he attributed to his April 5, 2004 employment injury. Dr. Tracy stated that appellant's period of disability was from December 7, 2006 to the present and that it was undetermined as to when he could return to work.

The record contains an August 16, 2007 duty status report (Form CA-17) indicating that appellant was not able to resume work.

Appellant subsequently submitted a June 6, 2007 CA-20 form from Dr. Tracy in which he indicated that appellant was totally disabled for the period December 7, 2006 through the

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<sup>2</sup> OWCP assigned file number xxxxxx098.

<sup>3</sup> *Id.* at file number xxxxxx005. By letter dated April 24, 2008, OWCP informed that claim numbers xxxxxx005 and xxxxxx098 were doubled, with the latter number designated the master file number.

present. Diagnoses due to the April 5, 2004 employment injury included moderate degenerative disc disease at C3-4, moderate degenerative disc disease, moderate degree of arthritis and lumbar anterolisthesis.

On July 22, 2008 appellant filed a claim for wage-loss compensation (Form CA-7) for the period March 19 to October 22, 2007.

In a letter dated July 28, 2008, OWCP informed appellant that the evidence of record was insufficient to establish that his disability for the period March 19 to October 22, 2007 was due to his accepted April 5, 2004 employment injury. Appellant was advised to submit evidence supporting his claim for total disability for the period in question.

In July 28, 2008, the employing establishment informed OWCP that appellant was suspended without pay for the period March 19 to October 22, 2007 as a result of a disciplinary action. It claimed that he was not totally disabled during this period and that, if not for the suspension, he would have been able to work. An October 3, 2007 settlement agreement was attached to show that no back pay was awarded. The settlement agreement stated that appellant would report to work for his first regularly scheduled day following October 20, 2007.

In an August 1, 2008 statement, appellant confirmed that he was suspended from the employing establishment beginning December 6, 2006 and that his suspension without pay began on March 17, 2007. During his period of suspension he related that he received social security disability benefits due to his being totally disabled for work. Appellant noted that his physician released him to work which he returned on October 22, 2007.

By decision dated September 8, 2008, OWCP denied appellant's claim for wage-loss compensation for the period March 19 through October 22, 2007. It found that the record contained no medical evidence supporting his claim that he was totally disabled during the claimed time frame.

On September 30, 2008 appellant requested an oral hearing before an OWCP hearing representative, which was changed to a review of the written record as he did not appear for the oral hearing. In support of his request, appellant submitted medical evidence including a July 6, 2007 CA-20 form report and a September 24, 2008 report from James R. Moneypenny, Ph.D., a clinical psychologist, who diagnosed anxiety disorder and depression due to harassment by appellant's supervisor. Dr. Moneypenny indicated that appellant was totally disabled for the period December 7, 2006 to the present. In a September 24, 2008 report, he related providing psychotherapy for appellant during the period March 19 to October 22, 2007.

On October 9, 2008 Dr. Sims indicated that appellant was medically unable to work for the period March 19 to October 22, 2007. He attributed appellant's disability to his psychiatric conditions of depression, chronic anxiety, being psychotic and having paranoid delusions.

On March 9, 2009 appellant submitted medical evidence including a June 4, 2007 report from Janice E. Dean, Ph.D, a clinical psychologist, who indicated that he was seen on May 9, 2007 for a psychiatric assessment. Dr. Dean noted that appellant fell off a ladder in April 2004 at work and that his problems became more severe in October 2006. She diagnosed anxiety

disorder and opined that his ability to work would be difficult as a result of “his difficulty sustaining focus and poor resiliency to stress.”

In a March 9, 2009 report, Dr Moneypenny stated that appellant was totally disabled from working for the period March 19 to October 22, 2007. He stated that during this period appellant was suffering from a psychosis which “entirely precluded his capacity to adapt and adjust to the demands of any work setting.”

On March 16, 2009 OWCP received a March 9, 2008 report from Dr. Sims stating that appellant was totally disabled from work for the period December 7, 2006 through October 22, 2007. Dr. Sims related that appellant received social security which considered him totally disabled for the period March 19 to October 22, 2009 as it found he was entitled to disability payments from it.

By decision dated May 8, 2009, an OWCP hearing representative affirmed the September 8, 2008 decision denying appellant’s claim for wage-loss compensation. He found the medical evidence of record insufficient to establish that appellant sustained a recurrence of disability due to his accepted employment injuries for the period in question.

On April 7, 2010 appellant’s representative requested reconsideration. He contended the medical evidence from Drs. Moneypenny, Sims and Tracy all support that appellant’s disability for March 19 to October 22, 2007 was directly due to his accepted employment injuries.

On April 19, 2010 OWCP received a November 3, 2009 report from Dr. Moneypenny regarding appellant’s disability for the period December 7, 2006 through October 22, 2007. Dr. Moneypenny related seeing appellant for complaints of harassment by his supervisor. Diagnoses included adjustment disorder with mixed emotional features, major depression with later diagnoses of depression, delusional disorder and anxiety disorder. He attributed appellant’s psychiatric symptoms and emotional stress to the conflict and stress with appellant’s supervisors. In concluding, Dr. Moneypenny opined that as a result of appellant’s cognitive confusion and emotional distress that he was precluded “from functioning in an adaptive or effective manner in his work setting.”

By decision dated June 18, 2010, OWCP denied modification.

### **LEGAL PRECEDENT**

Where an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.<sup>4</sup>

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<sup>4</sup> A.M., Docket No. 09-1895 (issued April 23, 2010); *Richard A. Neidert*, 57 ECAB 474 (2006); *Cecelia M. Corley*, 56 ECAB 662 (2005); *Terry R. Hedman*, 38 ECAB 222 (1986).

OWCP's implementing regulations define a recurrence of disability as an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>5</sup> This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn, (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.<sup>6</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>7</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>9</sup>

### ANALYSIS

OWCP accepted that appellant sustained neck sprain, lumbar sprain and rib sprain, which was expanded to include a consequential injury of anxiety disorder with mixed anxiety and depressed mood, anxiety state and major depression with recurrent episode, severe with mention of psychotic behavior. Appellant claimed compensation for total disability from March 19 to October 22, 2007. On July 28, 2008 OWCP advised him of the evidence needed to establish his claim. Appellant, however, did not submit any reasoned medical evidence to establish that his total disability from March 19 to October 22, 2007 was causally related to his accepted injuries. For example, he did not submit a medical report in which his treating physician explained why he was totally disabled during the claimed period as a result of his work injuries. The Board also notes that there is no evidence showing a change in the nature and extent of the light-duty job requirements or that, appropriate light duty was not available during the claimed period. While

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<sup>5</sup> 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3.b(a)(1) (May 1997). See also *Phillip L. Barnes*, 55 ECAB 426 (2004).

<sup>6</sup> *Id.* at § 10.5(x). See *A.M.*, Docket No. 09-1895 (issued April 23, 2010); *K.S.*, Docket No. 08-2105 (issued February 11, 2009); *Hubert Jones, Jr.*, 57 ECAB 467 (2006).

<sup>7</sup> *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

<sup>8</sup> *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

<sup>9</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

there is evidence that the employing establishment suspended appellant for the claimed period, there is no evidence that the suspension was due to his work injuries.<sup>10</sup>

In support of his claim appellant submitted reports from his physicians, Drs. Sims and Tracy and treating clinical psychologists, Drs. Dean and Moneypenny. In his various reports, Dr. Sims attributed appellant disability for the period March 19 to October 22, 2007 to appellant's depression, chronic anxiety, paranoid delusions and being psychotic. Similarly, Dr. Tracy opined that appellant was disabled for this period due to a change in his mental condition as a result of his neck and lower back conditions as well as his accepted lumbar and cervical conditions. Dr. Moneypenny concluded that appellant was totally disabled for the period in question due to his anxiety disorder and depression. He also noted that he provided psychotherapy treatment for appellant during the period March 19 to October 22, 2007. Dr. Dean reported seeing appellant on May 9, 2007 for a psychiatric assessment and concluded that he was unable to work due to his poor stress resiliency and difficulty focusing.

The Board notes that these reports do not contain any explanation regarding appellant's inability to work his light-duty position for the period March 19 to October 22, 2007. To establish a change in the nature and extent of the injury-related condition, there must be probative medical evidence of record. The evidence must include a medical opinion, based on a complete and accurate factual and medical history and supported by sound medical reasoning, that the disabling condition is causally related to employment factors.<sup>11</sup> While OWCP subsequently accepted a consequential emotional condition, none of the physicians or psychologists explained the reasons why there was a spontaneous change in appellant's accepted medical conditions such that it caused him to be unable to perform his light-duty job during the period at issue. Furthermore, none of the physicians or psychologist mentioned in their reports appellant had been suspended without pay for cause during the period March 19 to October 22, 2007. The Board has held that medical opinions based on an incomplete history are of diminished probative value.<sup>12</sup>

Dr. Moneypenny used the fact that appellant had been found to be disabled by the Social Security Administration to support his contention that appellant was entitled to FECA benefits. The Board notes that decisions by other agencies regarding disability are not binding on OWCP. The standards for establishing work-related disability under FECA, which governs OWCP and the Board, are not the same as the standards set for disability retirement or social security benefits.<sup>13</sup>

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<sup>10</sup> See *Terry R. Hedman*, *supra* note 4; see also 20 C.F.R. § 10.5(x) (a recurrence is not established where the withdrawal of light duty occurs for reasons of misconduct, nonperformance of the job duties or a reduction-in-force).

<sup>11</sup> *K.C.*, Docket No. 08-2222 (issued July 23, 2009); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

<sup>12</sup> *Cecelia M. Corley*, 56 ECAB 662 (2005).

<sup>13</sup> *P.H.*, Docket No. 10-981 (issued December 9, 2010); *Andrew Fullman*, 57 ECAB 574 (2006); *Raj B. Thackurdeen*, 54 ECAB 396 (2003).

The reports submitted by Drs. Dean, Moneypenny Sims and Tracy are insufficient to establish appellant's claim because they did not provide a rationalized medical opinion explaining how his accepted cervical, lumbar and emotional conditions prevented him from working light duty.<sup>14</sup> The Board notes that such medical reasoning is important as there were other factors that contributed to his inability to work, specifically his suspension without pay for cause during the period March 19 to October 22, 2007. There is no evidence that there was a change in the nature and extent of his light-duty job requirements.

As noted above, none of the medical reports submitted by appellant contained a rationalized opinion to explain why he could no longer perform the duties of his light-duty position and why any such disability or continuing condition for the period March 19 to October 22, 2007 would be due to the accepted conditions. The Board finds that he has failed to submit rationalized medical evidence establishing that his disability from March 19 to October 22, 2007 was causally related to his accepted employment injuries and thus, he has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant did not establish that he sustained a recurrence of disability for the period March 19 to October 22, 2007 causally related to his accepted April 5, 2004 employment injury.

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<sup>14</sup> See *S.F.*, 59 ECAB 525 (2008); *Richard A. Neidert*, 57 ECAB 474 (2006).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 18, 2010 is affirmed.

Issued: October 6, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board